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RESEARCH BRIEF

THE SEXUAL HARASSMENT AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT, 2013 AND THE 'NEW NORMAL': IMPACT OF COVID-19

**LEXQUEST FOUNDATION
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About the Organisation:

LexQuest Foundation (LQF) is an independent, non-profit, research and action organisation, established in 2014, in New Delhi. We are striving to create, advocate and implement effective solutions for a diverse range of development issues.

To endorse participative governance, we engage with a broad spectrum of stakeholders, from various sections of the society, to ensure that policy-making remains a democratic process. We utilize pragmatic and futuristic research to disseminate actionable knowledge to decision-makers, experts and the general public.

Our key activities include capacity and skill-building workshops, policy advisory programs, public outreach, and stakeholder consultations. We collaborate with the government, other organizations and individuals for impactful policy formulation and execution.

By employing sustainable and equitable solutions through our multidisciplinary, intersectional initiatives and programs, we are constantly working towards creating empowered communities.



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Overview

[Sexual Harassment](#), a gross violation of the human right to dignity, is mostly found to be perpetrated against women due to attendant perception, promulgated by patriarchy, that men are superior to women and that some forms of violence against women are acceptable. Sexual Harassment at the workplace, one of the more common forms of this malice is often overlooked by terming it as a trivial case of 'harmless flirtation' that women enjoy. Contrary to such perceptions, sexual harassment at the workplace causes severe physical and emotional damage. Such damage leads to reduced productivity and a negative impact on the lives and livelihoods of the victims. The problem is compounded by long-held socio-cultural beliefs that tend to place the responsibility on the victim, thereby appending to existing inequalities in the workplace and the society at large. Sexual harassment at the workplace is a form of gender discrimination which not only affects the person physically or psychologically but also curtails the right to work and equality which is coded in the Constitution of India under Articles 14, 15, and 21. To safeguard women from the peril of sexual harassment at the workplace, the Parliament passed the [Sexual Harassment at Workplace \(Prevention, Prohibition, Redressal\) Act, 2013](#) (Hereinafter referred to as the Prevention of Sexual Harassment or the POSH Act) which aims at providing a safe, secure and dignified working environment to women.

Presently, due to the impending risk of COVID-19, the Indian government has issued social distancing rules; work from home has conveniently become the new norm. Though this conversion of the residential space into a workplace has greased the wheels of corporate houses to continue their work, it also presents a challenge as the new virtual workplace has to bear the peril of online sexual harassment, which holds the potential of entering into the residential environment. Research has shown that the vulnerability of victims can increase during disasters such as COVID-19 for reasons including but not limited to decreased stability in employment, increased isolation, and the belief that online sexual harassment cannot be “serious” enough to warrant attention. We should note that ‘Work From Home’ (WFH) is not the standard practice in our country, and this



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leads us to ask the debatable question, i.e., whether or not the POSH Act of 2013 is capable of safeguarding the victims from Sexual Harassment just like it does in the physical workplace.

Functioning of the Act

The POSH Act gives us the definitions of terms like “Sexual Harassment”, “Workplace”, “Dwelling Place or House”, “Employer” and “Aggrieved Women”, etc. If a woman faces sexual harassment at the workplace, as described in the Act, she can file a written complaint against the perpetrator to the Internal Complaints Committee, which is constituted by the employer at a workplace for the exclusive use of the persons in such workplace, whose members then initiate the inquiry and prepare a report that they present to the employer, who is liable to take action based on the recommendations provided by the ICC. The Act also provides that all complaints made to the ICC should be disposed of by the same within ninety days, which makes it a good alternative to Criminal Courts which often take years to conclude the litigation process against a complaint of sexual harassment either under Section 354A of the Indian Penal Code or under any other provision.

Deliberation on POSH Act

To understand the sphere of influence of this Act, we need to focus on the definition of “Workplace”. According to Section 2(o)(v) of the POSH Act, interpretation of “Workplace” has widened not only to “the certified office” but it also covers any place visited by an employee during the duration of employment, and even includes the transportation provided to them by their employer. For persons working as domestic help, a separate provision, that is, Section 2(o)(vi) has been appended that considers residential quarters as a workplace. However, this provision exists exclusively for persons working as domestic help. Currently, there is no explicit provision that includes sexual harassment in WFH situations, which entails victims working from their homes but being harassed by



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their colleagues who work with them through virtual platforms. Although the ICCs at several workplaces have [interpreted](#) the broadened Section 2(o)(v) and Section 2(o)(vi) to have an extended meaning that includes virtual platforms and work from home situations, uniformity in the application cannot be achieved until the government rolls out mandatory provisions to effect the inclusion of such instances within the ambit of the Act. The ambiguity of the language, which results from the lack of explicit acknowledgment of WFH situations as a workplace within the Act limits the same from serving its true purpose. Several women have reported that they find themselves confused as to whether or not they [should register](#) the complaint of online sexual harassment under the POSH Act. The ambiguity exists even though the Delhi High Court, considered the case of [Jahid Ali vs Union of India](#), involving sexually inappropriate messages through the medium of SMS within the ambit of the POSH Act.

The functioning unit of the POSH Act is the Internal Complaints Committee who addresses the grievance of the victim. Before the onset of COVID-19, ICC was in many cases accused of not [functioning appropriately](#) and a flaw in the organizational structure of the committee in general was highlighted repeatedly. Throughout the lockdown, cases about the [ineffectiveness of ICC on filing cases have](#) been reported. Further, it was speculated that the time limit of ninety days for the disposal of cases, provided under the POSH Act would be difficult to adhere to and it might require up to six months for the ICC to dispose of such cases. The decision of the ICC of conducting the [case hearing](#) via video call can be very uncomfortable for women as they are in an informal setting, surrounded by family. The incidence of reporting in cases of sexual harassment is already [dismal](#) due to the social stigma attached to the victim in such instances. Fear and privacy-related concerns are escalated during virtual hearings since it is easier for people with malevolent intentions, such as hackers, to acquire data on such complaints and hearings and leak the same.

Women working from home have also been perplexed by the very definition of sexual harassment under the Act. Sexual harassment, which can be subtle has acquired new



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dimensions during the period of COVID19, leaving both the victim, as well as the ICC unsure as to whether a particular act can be considered sexual harassment. [For instance](#), women in the WFH environment were deemed uncomfortable by the inappropriate clothing of their colleagues. Instances such as these are uncharted territory, and therefore, difficult and complex to deal with under the current framework of the POSH Act, leaving many unsure as to whether such acts should be reported.

The outbreak of COVID-19 and the beginning of WFH has virtually made the concept of work-timings redundant. Employees are expected to work at [unreasonable hours](#), late into the night. Under the facade of work-related conversations, male employees often contact and harass female employees during, and post-work hours. Such acts are not explicitly monitored by the POSH Act since they have created an unprecedented situation. The Act, being ambiguous, as of now, leaves it to the ICC to decide upon such instances.

In 2017 the Ministry of Women and Child Development came up with an initiative, i.e, the Sexual Harassment electronic Box, to augment their efforts towards reducing the cases of Sexual Harassment in the country. “[SHe-Box](#)” was launched as an online complaint portal for women facing sexual harassment at the workplace. Women who were not satisfied with the working of the ICC, [found it easier](#) to report such cases through the said portal. One of the problems that has now arisen in the context of this initiative, is the absence of an explicit provision to submit a complaint in WFH situations.

Cyber Protection Laws and the POSH Act

Various [cases](#) of Online Sexual harassment have been registered during COVID-19. As mentioned earlier, the POSH Act’s ambiguity leads us towards confusion about its applicability in the current circumstance. But do we find solace in the [IT Act, 2000](#), which protects employees from cybercrime through **Section 67**, that prescribes the indicative measures against publishing or transmitting obscene content on electronic media? The ambit of this Act is limited, since sexual harassment can take various forms



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that might not even involve electronic media. Moreover, Section 67 [defines](#) the word obscene in a restricted manner to include only materials containing “lascivious or appeals to the prurient interest or if its effect is such as to tend to deprave and corrupt persons”. Sexual Harassment, as mentioned previously, occurs subtly in a lot of instances, and can easily fall outside the abovementioned definition. Acts such as calling or texting at odd hours under the guise of work, wearing inappropriate clothing during meetings, or unnecessarily badgering coworkers which all constitute sexual harassment cannot be covered by the IT Act.

Cases of online harassment can also be addressed and punished under the provisions of **Sections 354A, 354D, or 509** of the [Indian Penal Code, 1860](#). There is a significant [lack of awareness](#) regarding the provisions of the IT Act and the IPC. Since victims are oblivious to the relief provided under these provisions, they aren't able to claim a remedy under the same by filing a complaint before the Police. Consequently, many cases that can potentially be undertaken within the ambit of the said laws are never filed and remain unnoticed by the authorities. Further, given the emergency-like situation in the country during such pandemics, it is unreasonable to expect a woman who has undergone the trauma of sexual harassment to approach the Courts for relief and undertake a process that might take years to reach its conclusion. Therefore, protection provided by the IPC cannot be availed by the victim. Comparatively, the protocol of reporting under the POSH Act is quite easy.

The act of sexual harassment, as defined in [Apparel Export Promotion Council vs A.K. Chopra](#), is not limited to unwanted advances or conduct of sexual nature, but also includes any form of sex discrimination that affects the employment of women employees and unreasonably interferes with their work performance, ultimately creating an intimidating workplace environment. In [Dr. Punita K Sodhi vs Union of India](#), the Delhi High Court endeavored to define sex discrimination and concluded that the situations involving the use of abrasive language and imputation of the competence of a person only because such person is of a certain gender are sex discrimination. The Court



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further suggested the ICCs consider this broadened definition of sex discrimination when looking into cases of sexual harassment. The provisions under the IT Act and the IPC do not include broad forms of intimidation or discrimination which can only be remedied through the POSH Act. [Acts](#) that contaminate the work environment of women through the threat of detrimental treatment in employment or the stability of their present or future employment are forms of sexual harassment covered by the POSH Act. Given that the pandemic has affected the security of employment in almost every sector in the economy, such forms of harassment that the IT Act and IPC would not cover, can become extremely common, and victims need the protection of the POSH Act to continue working in a safe space.

The Way Forward

The POSH Act of 2013 seems ambiguous in the Work From Home scenario as it doesn't explicitly express the definition of "Workplace" and its link with the interpretation of the word "Aggrieved Women"; this lack of clarity needs to be resolved. The Act should be reviewed and updated as per the present scenario rather than leaving it entirely on the Courts to resolve the disputes, as it might prove to be a time-taking situation. In [Saurashtra, Salt Manufacturing Co. vs Bai Valu Raja & Ors](#) and [Saurabh Kumar Mallick vs the Comptroller and Auditor General of India & Anr](#), the Hon'ble Supreme Court and the Hon'ble High Court of Delhi in the respective judgments emphasized the idea of the extension of the notion of the workplace, where the very interpretation of the workplace cannot be restricted and should be updated with the ongoing trend especially concerning the advancement of information and technology.

In light of the "new normal", the government should amend the Act to include WFH situations as a "workplace" explicitly rather than leaving it to the interpretation of the Courts and the ICC. The government should further extend the functioning of the She-Box initiative, which has proven to be an effective method to file sexual harassment complaints so far by increasing awareness regarding the same amongst working women.



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The relevant Ministry can also extend the scope of its functioning by using it as a tool to help employers understand the instances covered under the POSH Act. Information pertaining to the new forms of harassment, the protocols for virtual hearings by the ICC, etc., can be dispersed through the She-Box.

Further, the act of sexual harassment itself has evolved to include new forms during this period. Sexual Harassment can now include the display of inappropriate material on-screen during working hours, the use of screensavers with sexual connotations, calling or messaging coworkers during working hours, and many other methods. The new forms of sexual harassment can easily be brushed off if the term “Sexual Harassment” is defined in a restrictive and traditional manner. With the emergence of such previously unexplored instances, the Act should look into the methodology derived in *Ellison vs Brady*, and approved by the Indian Supreme Court in [U.S. Sharma vs National Commission](#), which defines sexual harassment from the perspective of the victim. The cases, when analyzing the act that was complained about, focused on the emotional trauma suffered by the victim because of the act instead of the intention of the offender or the general perception towards the act itself.

The definition of appropriate conduct needs to be amended and the government, in furtherance of the same, should mandate all companies to bring forward a new code of conduct for WFH situations, since the area requires a slew of reforms. [The revisited code of conduct](#) should impose professionally appropriate norms on clothing, allow uncomfortable female employees to opt-out of video-calls for one-on-one conversations, and prevent employees from calling or texting coworkers at unreasonable hours.

The advent of social media has brought about the use of memes and jokes on virtual platforms, many of which can be inappropriate or promote the practice of discrimination. Norms of professional etiquette should be extended to prevent such practices.



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Patriarchy and gender stereotypes are proliferated deeply in our social practices and popular culture and the assumption that everyone understands the nuances of professional and unprofessional conduct would thus be wrongful. Awareness-raising activities, such as seminars ought to be conducted and assessed to improve practices and to address inappropriate behavior in the working environment.

Education about different types, and especially the new forms of sexual harassment must be put in place to dodge potential casualties.

Since the domain of sexual harassment has now shifted to virtual platforms, members of the ICC should be given training, not only in conducting virtual hearings but also in the field of Cyber and IT laws to ensure that they can address the issue of online harassment comprehensively.

Sexual Harassment at the workplace is a very sensitive issue that has to be solved very diligently. The POSH Act provides us with a safeguard against the perils of sexual harassment, but it also has to be noted that present laws are not fully sufficient to counter sexual harassment at the workplace. There are certain loopholes in the Act which need to be addressed, and the government and the legislature need to undertake appropriate measures to address the new concerns that have emerged in light of the WFH culture precipitated by the pandemic.



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